

Chapter 5

Article 25

Inmate Indecent Exposure and Sexual Disorderly Conduct Management

Effective-9/07

52100.1 POLICY

Indecent Exposure and Sexual Disorderly Conduct will not be tolerated by the California Department of Corrections and Rehabilitation (CDCR). Penal Code (PC) Section 314 defines Indecent Exposure as “the willful and lewd exposure of a person, or the private parts thereof, in any public place or in any place where there are present other persons to be offended or annoyed thereby. Sexual Disorderly Conduct is defined in California Code of Regulations (CCR) Section 3000 as “every person who touches, without exposing, their genitals, buttocks or breasts in a manner, or other circumstance of this touching, that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense, and that any reasonable person would consider this conduct offensive.

52100.2 PURPOSE

To ensure that every Indecent Exposure or Sexual Disorderly Conduct incident is reported, tracked, managed, subject to discipline, and referred for prosecution as set forth in this policy. An inmate who engages in Indecent Exposure or Sexual Disorderly Conduct shall be subject to a variety of Security Measures in an attempt to identify, prevent, reduce and eliminate the opportunity to repeat the behavior.

It is the policy of the department to provide support to every employee who observes an Indecent Exposure or Sexual Disorderly Conduct incident. Such support can include the Employee Assistance Program, the Employee Post Trauma Program, the Equal Employment Opportunity (EEO) referral process, and the imposition of Security Measures as described in Section 52100.4.

52100.3 IMPLEMENTATION

Incident Reporting and Tracking:

Every Indecent Exposure or Sexual Disorderly Conduct incident shall be documented by the observing employee on a CDC Form 115, Rules Violation Report (RVR).

Indecent Exposure is classified as either a Division D or a Division B offense. If the inmate has no prior criminal convictions for PC Section 314, Indecent Exposure or PC Section 288, Lewd Act on a Child or Dependent Person, the inmate will be charged with the Division D offense of Indecent Exposure. If the inmate has any prior criminal conviction for PC Section 314 or 288, the inmate will be charged with the Division B offense of Indecent Exposure with a Prior.

In addition, the Indecent Exposure shall be reported as an incident on the CDCR Form 837, Crime/Incident Report. All Indecent Exposure incident CDCR 837's shall be referred to the District Attorney.

An inmate who masturbates or engages in inappropriate touching of his/her genitals, buttocks, or breasts in public without exposing his/her genitals, for example under the clothing, will be charged with the Division E offense of Sexual Disorderly Conduct.

An inmate who engages in Indecent Exposure or Sexual Disorderly Conduct shall be referred for a mental health assessment through the submittal of a CDCR Form 115-MH, Rules Violation Report: Mental Health Assessment Request.

All employees observing an Indecent Exposure or Sexual Disorderly Conduct incident shall be provided the opportunity to complete a CDCR Form 2152, Employee Report of Inmate Sexual Misconduct. All Supervisors are required to complete the appropriate sections of the CDCR 2152, regardless of the employee's decision to complete the form.

Inmate clerks shall not prepare or type an Indecent Exposure or Sexual Disorderly Conduct RVR.

The assigned Captain shall be responsible for identifying all Indecent Exposure and Sexual Disorderly Conduct offenders within their area. A tracking list shall be distributed on a monthly basis to Correctional Administrators, Facility Lieutenants, the Chief/Senior Psychiatrist or Chief/Senior Psychologist, and the Indecent Exposure Review Committee (IERC), (see Section 52100.5 "Monitoring").

This list is highly restrictive and shall not be duplicated but shall be available for staff review at the facility/unit program office.

52100.4 SECURITY MEASURES

Inmates who engage in acts of Indecent Exposure or Sexual Disorderly Conduct will be subject to Security Measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff and others. Security Measures are tools used by staff for a determinate period to identify, prevent, reduce and eliminate the behavior.

There are two types of Security Measures. They are immediate Security Precautions and post Disciplinary Restrictions.

Security Precautions:

Immediate Security Precautions are implemented following a report, whether verbal or written, of Indecent Exposure or Sexual Disorderly Conduct. Correctional Officers/Sergeants shall implement Security Precautions. These Security Precautions shall be approved, tracked, and reviewed by the Lieutenant/assigned Captain on a weekly basis. In an Administrative Segregation Unit (ASU), Security Housing Unit (SHU) and Psychiatric Services Unit (PSU) the assigned Captain in consultation with the Interdisciplinary Treatment Team (IDTT) may remove or extend these precautions based on the overall case factors and institution security needs as appropriate.

Security Precautions include:

- Solid door with yellow placard, cell and/or side-window covering, or other devices primarily used to alert staff of an inmate's propensity to engage in Indecent Exposure or Sexual Disorderly Conduct behavior and secondarily used to limit the inmate's ability to observe staff while engaging in the behavior.

- Use of an Exposure Control Jumpsuit to limit the ability of the inmate to engage in the behavior.
- Temporary restriction from yard or other settings which may provide a venue for the behavior.
- Substitution of activity setting to reduce the possibility of the behavior impacting staff.

Application of Security Precautions:

Upon the first and subsequent Indecent Exposure or Sexual Disorderly Conduct offense(s), the inmate shall be identified on an Indecent Exposure Offender Tracking Memorandum.

Common Area Offenses:

If the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell/bed area in the General Population (GP) the following protocols shall be followed:

All offenses: Place in Administrative Segregation/status. Apply yellow cell front covering and Exposure Control Jumpsuit.

No yard access for 10 days followed by Exposure Control Jumpsuit while outside of cell.

If the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell/bed area in ASU/SHU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

First offense: No yard access for 10 days followed by Exposure Control Jumpsuit while outside of cell, and apply yellow window covering in an equipped facility.

Second offense: No yard access for 10 days followed by Exposure Control Jumpsuit while outside of cell, and apply yellow window covering in an equipped facility.

If the Indecent Exposure or Sexual Disorderly Conduct occurs outside of the cell in PSU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

First offense: No yard access for 10 days, followed by concrete yard for 60 days. Exposure Control Jumpsuit optional.

Second offense: No yard access for 10 days, followed by concrete yard for 120 days. Exposure Control Jumpsuit optional.

In Cell/Bed Area Offenses:

If the Indecent Exposure or Sexual Disorderly Conduct occurs inside the cell/bed area in the GP the following protocol shall be followed:

All offenses: Place in Administrative Segregation/status. Apply yellow cell front covering.

If the Indecent Exposure or Sexual Disorderly Conduct occurs inside the cell/bed area in ASU/SHU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

If the Indecent Exposure or Sexual Disorderly Conduct occurs inside the cell/bed area in PSU the following protocol shall be followed:

All offenses: Apply yellow cell front covering.

Restricted to 30 days concrete yard access.

If the Indecent Exposure or Sexual Disorderly Conduct offense occurs in a PSU Group setting the following protocol shall be followed:

Immediately remove inmate from group and return to cell.

Apply yellow cell front covering.

First offense: Refer to IDTT. Recommend 30-day suspension of group where, on a case-by-case basis, IDTT/clinical staff may temporarily restrict the inmate from group activity. Exposure Control Jumpsuit status upon return to group for 30 days with IDTT review and approval.

Second offense: Refer to IDTT. Recommend 60-day suspension of group where, on a case-by-case basis, IDTT/clinical staff may temporarily restrict the inmate from group activity. Exposure Control Jumpsuit status upon return to group for 90 days with IDTT review and approval.

All Security Precautions are reviewed weekly with the IDTT.

Any group suspension for Enhanced Out Patient level of care inmates requires clinical staff authorization.

Yellow Cell Front Coverings:

The application, review, and removal of yellow cell front coverings will be as follows:

The placement of yellow cell front coverings is mandatory for all Indecent Exposure and Sexual Disorderly Conduct offenses as a Security Precaution.

The reporting employee may initiate this Security Precaution immediately. The reporting employee shall submit a CDC 128-B, Security Precaution Chrono, advising of the yellow cell front covering. Distribution will include C-File, inmate, housing unit, and program office. If the reporting employee does not submit the Security Precaution Chrono, it is the Incident Commander's responsibility to ensure that a CDC 128-B is completed.

For the first offense the yellow cell front covering shall be applied for 90 days from the date of the offense.

For a second offense within 12 months from the most recent offense, or while on yellow cell front status, the inmate will be placed on yellow cell front status for 6 months from the most recent offense, which will run concurrent with the existing precaution.

Cell Front Covering Requirements:

The Warden will have the discretion to use solid yellow placards or cell front coverings, according to their cell front designs and material on hand, (lexan, paper, cardboard, etc.) as long as there is a review process in place to remove the Security Precautions when an inmate's behavior has been corrected.

Solid door: This type of door requires a yellow placard (yellow paper). Yellow paper is applied to the cell front windows as well as the count window, where applicable, leaving approximately eight to nine inches from the top or bottom of the windows uncovered, depending on the angle of control booth visual or upper/lower tier. When removing an inmate from a cell, conducting hourly security checks, and/or during count, it is required practice to remove the yellow paper completely in order to appropriately complete these duties.

Exposure Control Jumpsuit:

Exposure Control Jumpsuits are not to be used in the GP as the inmate requires close monitoring when wearing a jumpsuit.

The placement of an inmate onto Exposure Control Jumpsuit status is mandatory for all out-of-cell Indecent Exposure and Sexual Disorderly Conduct incidents as a Security Precaution in SHU and ASU.

The placement of an inmate onto Exposure Control Jumpsuit status is optional for all Indecent Exposure and Sexual Disorderly Conduct out-of-cell offenses in PSU.

The reporting employee may initiate this Security Precaution by submitting a CDC 128-B, Security Precaution Chrono. If a CDC 128-B is not submitted by the reporting employee, the Incident Commander is responsible to ensure that a CDC 128-B is completed.

First offense: An inmate shall be placed on Exposure Control Jumpsuit Security Precaution for 30 days from the date of the offense.

Second and Subsequent offenses: Should the inmate re-offend within 12 months of the most recent offense, or while on jumpsuit status, the inmate will be placed on jumpsuit status for 90 days from the most recent offense, which will run concurrent with the existing precaution.

Disciplinary Restrictions:

Disciplinary Restrictions are applied as a result of a disciplinary action where inmates are afforded due process.

Inmates found guilty of committing an Indecent Exposure or Sexual Disorderly Conduct offense through the inmate disciplinary process may be subject to credit and privilege loss.

The suspension of privileges based on a finding of guilt in a disciplinary hearing, pursuant to CCR Sections 3007, 3323(d)(7), 3323(f)(5) and 3323(g)(8) shall be assessed as follows:

First offense: A finding of guilt in a disciplinary hearing for Indecent Exposure or Sexual Disorderly Conduct may result in the loss of privileges including, but not limited to, any or all of the following, for up to a 90 day period:

- (1) Canteen
- (2) Appliances
- (3) Vendor packages
- (4) Telephone privileges
- (5) Personal property

Second or subsequent offense: A finding of guilt in a disciplinary hearing for Indecent Exposure or Sexual Disorderly Conduct may result in the loss of any or all of these privileges for up to a 180 day period.

Following the completion of the disciplinary process and a finding of guilt, security precautions and disciplinary restrictions may remain in affect for a period of time designated by the Senior Hearing Officer (SHO) consistent with this policy. If a finding of not guilty results, the security precautions shall be removed.

District Attorney Referrals:

All Indecent Exposure incidents shall be referred to the District Attorney per the current Memorandum of Understanding between the institution and the District Attorney.

This Memorandum of Understanding will include an explanation concerning the reason Indecent Exposure misdemeanor cases require prosecution.

The IERC shall publish a status report concerning Indecent Exposure incident cases referred to the District Attorney no less than quarterly. A copy of the status report shall be provided to the Warden and the District Attorney.

Classification:

Any inmate charged with an Indecent Exposure or Sexual Disorderly Conduct offense shall be placed in ASU and reviewed by the ICC to determine the appropriateness of ASU retention, pending disciplinary matters, and/or future housing considerations.

Inmates found guilty in a disciplinary hearing of committing an Indecent Exposure (either Division D or Division B offense) may also be subject to the imposition of an "R" suffix custody designation (refer to DOM section 62010.4.3.1.).

A review of the "R" suffix custody designation shall be initiated by the Institutional Classification Committee (ICC) when an inmate has been found guilty in a disciplinary hearing for Indecent Exposure.

Assessment of SHU Term:

A determinate period of confinement in a SHU may be established for an inmate when found guilty of an Indecent Exposure or Sexual Disorderly Conduct per CCR Section 3341.5(c)(9)(K) "Sexual Misconduct." The term shall be established by the ICC utilizing the standards in the SHU Term Assessment Chart in CCR Section 3341.5.

Family Visiting Restrictions:

Per CCR, Title 15, Section 3177(b)(1)(A), an inmate may be restricted from family visiting even without a criminal conviction, provided there is substantial evidence of such misconduct. Substantial evidence includes a guilty finding on a disciplinary report. Therefore, a guilty finding for Indecent Exposure may prohibit the inmate from family visiting. This prohibition may be permanent. This restriction on family visiting is not a penalty imposed by the SHO as part of the disciplinary disposition. A classification committee may impose this restriction when family visiting is reviewed. In the hearing summary, it is sufficient for the SHO to note the inmate has been found guilty of an offense listed under the CCR, Title 15, Section 3177(b)(1)(A), as prohibiting family visiting.

Mental Health Referral and Evaluation:

An inmate who engages in Indecent Exposure or Sexual Disorderly Conduct shall be referred for a mental health assessment through the submittal of a CDCR Form 115-MH, Rules Violation Report: Mental Health Assessment Request. At the same time, custody staff will implement Security Precautions as described in Section 52100.4.

Offenders who are already enrolled in the Mental Health Services Delivery System (MHSDS) will have this issue addressed by the IDTT assigned to that unit. The IDTT may recommend specific behavioral security precautions, in addition to appropriate adjustments to medications and/or other therapeutic interventions, in an effort to identify, prevent, reduce, and eliminate the behavior.

The receipt of the mental health assessment by mental health clinicians shall be reviewed for potential further mental health screening or a comprehensive mental health evaluation to determine if the inmate has a condition that warrants entry into the MHSDS. A diagnosis of Exhibitionism requires entry into the MHSDS under the medical necessity designation.

The results of Indecent Exposure or Sexual Disorderly Conduct related Mental Health Assessments shall be provided to the IERC no less than quarterly.

Training:

Training will be provided to impacted personnel necessary for the ongoing management of the Indecent Exposure and Sexual Disorderly Conduct Procedures.

Employee Policy Recommendations regarding Indecent Exposure or Sexual Disorderly Conduct Incidents:

All staff shall be allowed to make policy recommendations regarding Indecent Exposure or Sexual Disorderly Conduct incidents to their supervisor at any time. Written recommendations shall be submitted to the employee's supervisor who shall forward the recommendation to the IERC for consideration.

52100.5 MONITORING

The IERC will monitor the implementation and effectiveness of the policy and procedures set forth above. The IERC will meet no less than quarterly. The IERC is comprised of administrative staff at the level of Associate Warden, Chief or Senior Psychiatrist and Chief or Senior Psychologist, other program staff as appropriate, and other mental health staff as appropriate, Custodial Management, Litigation Coordinator, and a Recorder who will prepare minutes from the meeting. The IERC will evaluate policy

compliance and effectiveness, and monitor the impact of Security Measures, and clinical programs using the tracking reports, Incident Reports, and the Employee Report of Inmate Sexual Misconduct.

The Warden will forward monitoring information to headquarters on a regular basis and headquarters will monitor the activities of the IERC.

52100.6 Revisions

The Director of the Division of Adult Institutions or designee is responsible for ensuring that the contents of this article are kept current and accurate.

52100.7 Reference

CCR §§ 3000, 3007, 3177, 3323, 3341.5

DOM, Section 62010.4.3.1,

PC §§ 288, 314